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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,282	08/06/2003	Bobby N. Flowers	3285	1375

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EXAMINER

HAWKINS, CHERYL N

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 06/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/635,282

Applicant(s)

FLOWERS, BOBBY N.

Examiner

Cheryl N. Hawkins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Weaver (US 2002/0029859). Weaver discloses an apparatus (Figure 1, applicator 10) for applying a film (Figure 3, roofing felt 100) to a surface comprising a frame; a handle (Figure 1, handle assemblies 18 and 20) secured to the frame; a film roll dispenser (Figure 1, spindle assembly 32) mounted to the frame for supporting a roll of the film (Figure 2, spool 34) to be applied to the surface; a guide bar (Figure 3, stress-relief rollers 36, 38, 40, 42, 44) secured to the frame in front of the film roll dispenser for guiding the film as it is dispensed from the roll of film; and at least one roller (Figure 1, rollers 99 and 92) rotatably secured to the frame generally below the film roll dispenser and the guide bar, the roller for flattening the film against the surface, as the film is dispensed from the roll of film and guided to the roller from the guide bar.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US 3,617,424) in view of Weaver (US 6,484,781) and Hefter et al. (US 2003/0101536). As to Claim 1, Smith discloses an apparatus for applying a film (Figure 4, tape 37) to a surface (Figure 1, support surface 11), the apparatus comprising a frame (Figure 1, base section 10, tape support section 12); a handle (Figure 1, hand grip 23) fastened to the frame for pushing the apparatus; a film roller dispenser (Figure 1, tape spindle 24) secured to the frame for supporting a roll of film to be applied to a surface; and front and rear rollers (Figure 4, rollers 15 and 16) secured to the frame below the film roll dispenser for flattening the film against the surface. Smith does not disclose an apparatus which includes a guide bar secured to the frame in front of the film roller dispenser for smoothing the film as it is dispensed from the roll of film. It is well known and conventional in the tape dispenser art, as disclosed by Weaver (Figure 3, stress-relief rollers 36, 38, 40, 42, 44), to provide a tape dispenser apparatus with a guide bar secured to the frame in front of a film roll dispenser for smoothing the film as it is dispensed from the film roller. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Smith to include a guide bar secured to the frame in front of a film roller dispenser as suggested by Weaver to smooth the film as it is being dispensed from the film roller. Also, Smith does not disclose an apparatus which includes a trailing roller secured to the rear of

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the frame behind the rear roller for supporting the apparatus as it is extended over a stair. The difficulties arising from utilizing the apparatus disclosed by Smith for applying the film to stairs would have been readily apparent to one of ordinary skill in the art at the time of the invention. Hefter et al. disclose an apparatus which includes a trailing roller (Figure 6, lateral rollers 21) secured to the rear of the frame for supporting the apparatus as it is extended over a stair. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Smith to include a trailing roller secured to the rear of the frame as suggested by Hefter et al. for supporting the apparatus as it is extended over a stair.

As to Claim 2, the references as combined (see Hefter et al.) disclose an apparatus which includes a stair guide having a frame slidably secured (Figure 1, arresting device 19, supporting-foot device 13) to the apparatus frame and at least one wheel (Figure 1, lateral rollers 21) secured to the stair guide frame, the stair guide slidable between a retracted position (Figure 1) wherein the stair guide wheel is even with the apparatus rollers, and an extended position wherein the stair guide wheel extends below the apparatus rollers (Figure 6).

As to Claim 3, the references as combined (see Hefter et al.) disclose an apparatus which includes a latch (Figure 1, arresting device 19; paragraph 47, lines 7-11) to releasably secure the stair guide in the extended position.

As to Claim 5, Smith discloses an apparatus for applying a film (Figure 4, tape 37) to a surface (Figure 4, support surface 11), the apparatus comprising a frame (Figure 1, base section 10, tape support section 12); a handle (Figure 1, hand grip 23) fastened to the frame; a film roller dispenser (Figure 1, tape spindle 24) mounted to the frame for supporting a roll of film to be applied to a surface; and front and rear rollers (Figure 4, rollers 15 and 16) rotatably secured to

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the frame below the film roll dispenser for flattening the film against the surface as it is dispensed from the film roll and under the front and rear rollers. Smith does not disclose an apparatus which includes a guide bar secured to the frame in front of the film roller dispenser for guiding and smoothing the film as it is dispensed from the roll of film. It is well known and conventional in the tape dispenser art, as disclosed by Weaver (Figure 3, stress-relief rollers 36, 38, 40, 42, 44), to provide a tape dispenser apparatus with a guide bar secured to the frame in front of a film roll dispenser for smoothing the film as it is dispensed from the film roll. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Smith to include a guide bar secured to the frame in front of a film roller dispenser as suggested by Weaver to guide and smooth the film as it is being dispensed from the film roll. Smith does not disclose an apparatus which includes a trailing roller secured to the rear of the frame behind the rear roller for supporting the apparatus as it is extended over a stair. The difficulties arising from utilizing the apparatus disclosed by Smith for applying the film to stairs would have been readily apparent to one of ordinary skill in the art at the time of the invention. Hefter et al. disclose an apparatus which includes a trailing roller (Figure 6, lateral rollers 21) secured to the rear of the frame for supporting the apparatus as it is extended over a stair. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Smith to include a trailing roller secured to the rear of the frame as suggested by Hefter et al. for supporting the apparatus as it is extended over a stair thereby enabling a user to easily apply the film to stairs. Smith does not disclose a pair of stair guides. Hefter et al. disclose a stair guide (Figure 1, supporting-foot device 13) slidably secured (Figure 1, arresting device 19) to the frame outboard of the rollers and generally perpendicular to a longitudinal axis

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of the rollers, the stair guide including at least one wheel (Figure 1, lateral rollers 21) rotatably secured to the stair guide, the stair guide slidable between a retracted position (Figure 1) wherein the at least one wheel is generally even with the rollers, and an extended position (Figure 6) wherein the at least one wheel extends below the rollers, the stair guides releasably lockable in the extended position to support the apparatus (paragraph 47, lines 7-11). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Smith to include a pair of stair guides slidably secured to the frame outboard of the rollers and perpendicular to a longitudinal axis of the rollers, the stair guide including at least one wheel rotatably secured to the stair guide, the stair guide slidable between a retracted position wherein the at least one wheel is generally even with the rollers, and an extended position wherein the at least one wheel extends below the rollers, the stair guides releasably lockable in the extended position to support the apparatus as suggested by Hefter et al. for supporting the apparatus as it is extended over a stair thereby enabling a user to easily apply the film to stairs.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US 3,617,424), Weaver (US 6,484,781), and Hefter et al. (US 2003/0101536) as applied to claim 3 above, and further in view of Hughes (US 4,212,611). The references as combined (see Hefter et al.) disclose an apparatus which includes a stair guide arresting element (Figure 1, arresting device 19) secured at a first end to the apparatus frame (Figure 1, shaft 1) and at a second end to the stair guide frame (Figure 1, supporting-foot device 13), but do not disclose the arresting guide as being a spring. It is well known and conventional in the apparatus art, as disclosed by Hughes (Figure 1, arrestor 40; column 6, lines 19-22), to utilize springs in arresting structural

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elements. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the arresting element disclosed by the references as combined to include a spring as suggested by Hughes; springs being well established in the art for operating as arresting structural elements.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US 3,617,424) in view of Weaver (US 6,484,781). Smith discloses an apparatus for applying a film (Figure 4, tape 37) to a surface (Figure 4, support surface 11) comprising a frame (Figure 1, base section 10, tape support section 12); a handle (Figure 1, hand grip 23) secured to the frame; a film roll dispenser (Figure 1, spindle 24) mounted to the frame for supporting a roll of the film to be applied to the surface; and at least one roller (Figure 4, rollers 15 and 16) rotatably secured to the frame generally below the film roll dispenser, the roller for flattening the film against the surface, as the film is dispensed from the roll of film. Smith does not disclose a guide bar secured to the frame in front of the film roll dispenser for guiding the film as it is dispensed from the roll of film. It is well known and conventional in the tape dispenser art, as disclosed by Weaver (Figure 3, stress-relief rollers 36, 38, 40, 42, 44), to provide a tape dispenser apparatus with a guide bar secured to the frame in front of a film roll dispenser for smoothing the film as it is dispensed from the film roller. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Smith to include a guide bar secured to the frame in front of a film roller dispenser as suggested by Weaver to smooth the film as it is being dispensed from the film roller.



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7. Claims 7-11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US 3,617,424) and Weaver (US 6,484,781) as applied to claim 6 above, and further in view of Hefter et al. (US 2003/0101536). Smith does not disclose an apparatus which includes a trailing roller rotatably secured to the frame behind the roller for supporting the apparatus as the roller is extended over a stair. The difficulties arising from utilizing the apparatus disclosed by Smith for applying the film to stairs would have been readily apparent to one of ordinary skill in the art at the time of the invention. Hefter et al. disclose an apparatus which includes a trailing roller (Figure 6, lateral rollers 21) secured to the rear of the frame for supporting the apparatus as it is extended over a stair. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Smith to include a trailing roller secured to the rear of the frame as suggested by Hefter et al. for supporting the apparatus as it is extended over a stair thereby enabling a user to easily apply the film to stairs.

As to Claim 8, the references as combined (see Hefter et al.) disclose an apparatus which includes a means to support the apparatus (Figure 1, supporting-foot device 13, arresting device 19) off of the at least one roller.

As to Claim 9, the references as combined (see Hefter et al.) disclose an apparatus wherein the support means (Figure 1, supporting-foot device 13, arresting device 19) includes a support frame slidably secured to the frame and slidable between a retracted position (Figure 1) wherein the apparatus is supported by the at least one roller and an extended position (Figure 6) wherein the apparatus is supported by the support frame.

As to Claim 10, the references as combined (see Hefter et al.) disclose an apparatus wherein the support means (Figure 1, supporting-foot device 13, arresting device 19) includes at

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least one wheel (Figure 1, lateral rollers 21) rotatably secured to the support frame and wherein the apparatus is supported by the wheel when the support means is in the extended position (Figure 6).

As to Claim 11, the references as combined (see Hefter et al.) disclose an apparatus which includes means to releasably lock the support means in the extended position (Figure 1, arresting device 19; paragraph 47, lines 7-11).

As to Claim 13, the references as combined (see Hefter et al.) disclose an apparatus which includes rollers (Figure 1, lateral rollers 21) which are capable of tucking the film into a corner of the stairs.

8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US 3,617,424), Weaver (US 6,484,781), and Hefter et al. (US 2003/0101536) as applied to claim 11 above, and further in view of Kudlicka (US 4,462,627). The references as combined do not disclose an apparatus wherein the means for releasable locking the support means includes a latch pin. It is well known and conventional in the apparatus art, as disclosed by Kudlicka (column 1, lines 54-58), to utilize a latch pin which is movable between a released position and a locked position to retain the frame in a desired position. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the releasable locking means of the references as combined to include a conventional latch pin as disclosed by Kudlicka; latch pins being well established in the art for retaining a frame in a desired position.

***Response to Arguments***

9. In response to the applicant's argument that the reference of Weaver does not include a guide bar as claimed and disclosed in the present invention, the examiner disagrees. Claim 6 recites a "guide bar secured to said frame in front of said film roll dispenser for guiding said film as it is dispensed from said roll of film". Merriam-Webster's Collegiate Dictionary discloses the conventional definition of a bar as being "a straight piece that is longer than it is wide and has any of various uses" (see page 91) and a guide as being "a device for steadying or directing the motion of something" (see page 517). Based on the conventional definition of those two terms, each of the rollers disclosed by Weaver (see Figure 3, rollers 36, 38, 40, 42, 44) can be considered a guide bar. Therefore, the examiner asserts that the reference of Weaver sufficiently meets all of the limitations recited by Claim 6. It is also noted that the conventional definition of a guide bar does not exclude rotational movement, therefore the limitations recited by Claim 6 do not exclude an axle or roller from serving as a guide bar.

In response to the applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a front guide bar which is bowed outwardly) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In response to the applicant's argument that the axles and rollers disclosed by Weaver, which relieve stress in and remove curl from the sheet material, serve a different purpose than the guide bar of the invention, which prevents wrinkles from being formed in the film, the examiner notes that a recitation of the intended use of the claimed invention must result in a structural difference

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between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). The examiner maintains that the axles and rollers disclosed by Weaver are capable of performing the intended use, i.e. smoothing the film as it is dispensed from its supply roll, and therefore meet the limitations of the claims.

In response to the applicant's argument that the reference of Hefter et al. is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the prior art disclosed by Hefter et al. is reasonably pertinent to the particular problem with which the applicant was concerned, i.e. a structure for supporting an apparatus as it is being extending over a stairway.

In response to the applicant's argument that Hughes is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the prior art disclosed by Hughes is reasonably pertinent to the particular problem with which the applicant was concerned, i.e. the

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use of a spring in conjunction with an arresting device to control the movement of a structural element.

In response to the applicant's argument that Hefter et al. discloses a structure for supporting the device when it is traveling up a moving staircase and not for supporting the device over the staircase, the examiner disagrees and notes that Hefter et al. discloses an embodiment of the apparatus which moves over the stairway while the stairway is in a standstill position (page 3, paragraph 60).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., means for tucking the film into a 90 degree corner of the stairs) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The examiner asserts that the trailing roller disclosed by the references as combined (see Hefter et al. - Figure 1, lateral rollers 21) is capable of tucking the film into a corner of the stairs.

In response to applicant's argument that Kudlicka is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the prior art of Kudlicka is reasonably pertinent to the particular problem with which the applicant was concerned, i.e. the use of a latch pin to retain an apparatus frame in either a released position and a locked position.

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In response to the applicant's argument that the device disclosed by Smith, Weaver, Hefter et al., Hughes, and Kudlicka does not solve the problem of applying a wrinkle free film to a carpeted surface, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). The examiner maintains that the apparatus of Smith as modified with the teachings of Weaver, Hefter et al., Hughes, and Kulicka is capable of performing the intended use, i.e. smoothing the film as it is dispensed from its supply roll, and therefore sufficiently meets the limitations of the claims.

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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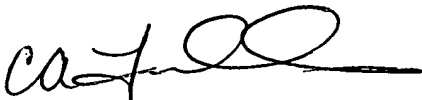
however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl N Hawkins whose telephone number is (571) 272-1229. The examiner can normally be reached on 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher A Fiorilla can be reached on (517) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Cheryl N. Hawkins* 5/16/05  
Cheryl N. Hawkins  
May 16, 2005

  
**CHRIS FIORILLA**  
**SUPERVISORY PATENT EXAMINER**  
*Au 1734*